IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRL.A.No. 516 of 1999()

CC.789/1997 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM
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APPELLANT: COMPLAINANT

L.CDR.JACOB VARGHESE,
(INDIAN NAVY), ALD, INS-GARUDA,
NAVAL BASE, COCHIN 4.

BY ADV. SRI.P.K.SURESH KUMAR

RESPONDENT: ACCUSED
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1. DAISY JOHN, KURAVANPARAMBIL HOUSE,
MUKKAVALA P.O.,
KAYAMKULAM.

2. STATE OF KERALA, BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.VPK.PANICKER
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.516 of 1999

Dated this the 12th day of July, 2007

JUDGMENT

The appellant is the complainant in C.C.No.789/97 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused was acquitted.

2. The case of the complainant is that the accused borrowed a sum of Rs.2.5 lakhs and after repeated requests, towards the discharge of liability the accused issued the impugned cheque for Rs.50,000/- drawn on SBT, Kayamkulam dated 21.5.1997 which when presented for encashment got dishonoured for want of sufficient funds in the account of the accused. The demand notice sent was not replied to nor was any amount paid.

3. The evidence adduced in the matter consisted the testimony of PW1 and Exts. P1 to P8. The defence examined DW1, Bank Manager, who has proved Exts. D1 and D2, the copy of the D/D and D/D issue register respectively, and Exts. D3 which is the copy of the notice allegedly sent by the complainant.

Ext.C1 the extract of the account of the accused was also proved through DW1.

4. The trial court has found that the version of the complainant that he gave a loan of Rs.2.5 lakhs to the accused without any security appeared improbable. The defence version is that the amount borrowed was only Rs.50,000/- and that the same was repaid on 1.3.1996 as per the D/D for the same amount. i.e., evidenced Exts. D1 and D2 and the evidence of DW1. It was noted that there is no documentary evidence at all to prove the lending of Rs.2.5lakhs to the complainant.

5. The counsel for the appellant has strongly relied on Ext.P5 letter issued by the accused and produced by the complainant dated 3.4.1995 wherein it is mentioned that she is dispatching a sum of Rs.70,000/- to the complainant through one Babu. According to the counsel, the total amount due from the accused was Rs.2.5 lakhs ; and Rs.70,000/- as well as the D/D amount was paid towards the alleged loan of Rs.2.5 lakhs. I find that still a sum of Rs.80,000/- would be due. There is no explanation for the same. The defence version is that Rs.7,000/- paid was towards the amounts due from the husband of the

accused. In the circumstances, the version of the defence appeared were probable. PW1 has also stated in the cross examination that the amount received through D/D was credited to the combined account of the accused and her husband. It is in the above circumstances, the trial court doubted the genuineness of the case set up that altogether a sum of Rs.2.5 lakhs was borrowed and Rs.50,000/- was repaid by way of D/D and Rs.70,000/- as per Ext. P5 letter. But, it is the case that only the impugned cheque has been issued towards the balance amount whereas the balance amount would be Rs.1.3lakhs. Of course, the accused has not stepped into the witness box nor has she sent a reply notice, but only on the basis of the above attitude of the accused she cannot be convicted unless the prosecution proves its case beyond reasonable doubt.

6. In the circumstances, I find no reasons to interfere in the findings of the court below in exercise of the revisional jurisdiction.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl